IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.381 OF 2007
WITH
CRI.APPLICATION NO.4399 OF 2006

Anil Sitaram Khochare ..Petitioner

Vs.

State of Maharashtra ..Respondents

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Mr.A.S.Pawaskar i/b M/s.Khandeparkar and Associates for Petitioner
Mr.Rajesh More A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : APRIL 11, 2007

P.C.

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The applicant is seeking anticipatory bail in C.R.No. 6 of 2006 of L.C.B. Sindhudurg, with Oras Police Station. The said case is mainly under Sections 405, 406, 407, 408, 409, 420 r.w. 34 of IPC and under Sections 3, 7 and 8 of Essential Commodities Act.

3. It is the prosecution case that there was a racket dealing in foodgrains which were allotted under Employment Guarantee Scheme (E.G.S.) so as to distribute the foodgrains to the labourers for the services rendered by them on 60% : 40% basis i.e. giving coupons for 60% against which they could obtain foodgrains from the fair price shop and 40% was given to them as cash against labour charges. The basic idea behind this Scheme was to provide foodgrains to the labourers either on the site or in the fair price shop by providing coupons which were issued to the labourers every month. The fair price shop owner was under obligation to maintain the account of the foodgrains supplied to the said labourers and he had to produce those coupons before the Tahsildar along with account of the foodgrains supplied by him.

4. However, during the investigation, it transpired that foodgrains were never supplied and the labourers on the site were only given labour charges to the extent of 40% and farce of supplying foodgrains was made only by issuing coupons to them and when those coupons were produced before the fair price shop keepers, it was found that there

was no stock to supply foodgrains to the labourers. As per the said scheme, Food Corporation of India supplied grains to the Government who inturn supplied it to the fair price shop keepers and the labourers used to give their coupons to the fair price shop keepers and collect the grains. As per the said Scheme, wheat and rice were distributed by the State Government in favour of fair price shop keepers at the rate of Rs.465/- per quintal in respect of wheat and Rs.265/- per quintal in respect of rice. The basic idea is that the foodgrains supplied by the Government were not to be sold but it was to distributed to the labourers in lieu of 60%. The present applicant is a fair price shop keeper. The fair price shop owners running fair price shops were not required to purchase the goods but the Supply Officer would provide foodgrains to the fair price shop keepers at the cost of the State and the shop keepers were entitled to Rs.30/- per quintal by way of rebate in services rendered by them.

5. On 21.10.2006, P.S.I. Koli of Oras Police Station received credible information that foodgrains allotted under various Government

schemes and more particularly under E.G.S. has been illegally transported from the Government godown by using goods tempo bearing No.MH-07/3142 at Kasal. Thereafter a trap was arranged wherein they found bags of foodgrains were unloaded in the godown of one of the co-accused. During the enquiry, the above racket was unearthed in which the applicant was granted anticipatory bail for some period of time. However, the learned A.P.P. has submitted that though the applicant had attended the police station as directed, he has not cooperated with the investigation nor he has produced the necessary documents.

6. The learned A.P.P. has submitted that the applicant instead of giving goods to the labourers, has sold it to other persons in the market. He has relied upon the statement of Mukesh wherein Mukesh has stated that it was the present applicant who used to supply foodgrains to the co-accused. Besides this statement, statement of tempo driver Chandrakant, has been recorded wherein he has stated that present applicant had given him bags of foodgrains which were to be carried to another shop and the applicant did not produce any permits or

any documents in respect of the said goods. So also the statement of other witnesses have been recorded who have loaded such goods from the shop of the applicant into tempo and these foodgrains were taken to other shops.

7. The applicant has earlier been granted anticipatory bail for 90 days by order dated 3.11.2006. The said order has been challenged by the State by way of Revision Application No.4399 of 2006 for cancellation of anticipatory bail. The order granting anticipatory bail came to be granted mainly on the ground that the case against the petitioner has been based only on hearsay evidence i.e. statement of co-accused and the goods have already been seized hence, it cannot be said to be a case for custodial interrogation. As far as these aspects are concerned, the case against the petitioner is not based only on statement of co-accused but there are independent witnesses who implicate the petitioner. As far as the second aspect is concerned, the value of the goods was more than Rs.10 lakhs. Even till today, only goods worth Rs.3 lakhs have been recovered by the prosecution. Moreover, even today the

investigation is still going on and some documents are yet to be seized by the Investigating Agency. Thus, the grounds on which anticipatory bail came to be granted to the applicant are clearly erroneous grounds and hence, the said order deserves to be set aside and is accordingly set aside. However, as stated by the prosecution, as the period of 90 days mentioned in the order expired, the said application does not survive and is disposed of.

8. As stated in the present matter there is sufficient material to point out an accusing finger to the applicant. The Apex Court has observed in the decision of the **Directorate of Enforcement Vs. P.V.Prabhakar Rao reported in 1997 S.C.C. (Cri.) 978** that when the material gathered by the prosecution is such that it points out an accusing finger towards the accused, it is not a fit case to grant anticipatory bail.

9. Lastly, it is pointed out that many of the co-accused have been granted bail. However, the criterion for grant of bail and anticipatory bail is entirely different. It has been so observed by

the Supreme Court in the case of **State Vs. Anil Sharma; 1997 S.C.C. (Cri.) 1039.** Hence, an accused cannot be granted anticipatory bail on the ground that the co-accused has been granted bail.

10. In view of the above fact, Writ Petition is rejected.

11. The Courts below shall not be influenced by the observations made in this order while deciding the application for bail or deciding the trial.

12. The learned advocate for the petitioner sought time to surrender before the Investigating Agency. However, looking to the facts of this case, I am not inclined to grant time. The said prayer is rejected.

[Smt. V.K.Tahilramani, J.]